

## **NOTICE OF PROPOSED INTERIM RULEMAKING**

### **Interested Persons**

Interested persons may submit comments, information or arguments concerning any of the following interim regulations proposed by the New Jersey Turnpike Authority until the date indicated below. Submissions and proposals should be addressed to the agency officer specified below.

The following proposed interim rulemaking is being undertaken by the New Jersey Turnpike Authority pursuant to P.L. 2003, c. 79 (the "Consolidation Legislation), described below. Pursuant to the Consolidation Legislation, specifically C.27:23-42(b)(7)), the Turnpike Authority is not subject to the notice and procedural requirements of the Administrative Procedures Act in promulgating interim rules. Accordingly, the period for public comment on the proposed interim rulemaking shall end on the close of business on August 4, 2003. At the close of the public comment period, the New Jersey Turnpike Authority may thereafter adopt the proposed interim regulations without change, or with changes. If, after review of any comments proposing a material change, the Executive Director, in his judgment, determines that it is appropriate that the proposed interim rules be adopted without material change, then he may file such interim rules with the Office of Administrative Law without further review or action by the Commissioners of the Turnpike Authority. The adoption of these regulations shall become effective immediately upon filing thereof with the Office of Administrative Law, all in accordance with the Consolidation Legislation, P.L. 2003, c. 79 (C.27:23-42(b)(7)).

### **NEW JERSEY TURNPIKE AUTHORITY**

#### **Procurement Regulations (Except Towing Procurement)**

**Proposed Repeals:** N.J.A.C. 19:8-5.1, 19:8-5.2, 19:8-5.3, 19:8-5.4, 19:8-5.5, 19:8-5.6, 19:8-5.8, 19:8-5.9, 19:8-5.11, 19:8-5.12, 19:8-5.13, 19:8-5.14, 19:8-5.15, 19:8-5.17, 19:8-5.18

**Proposed Modification:** N.J.A.C. 19:9-2.5(a).

**Miscellaneous Regulations**

**Proposed New Rule: N.J.A.C. 19:9-6.4**

Authorized By: New Jersey Turnpike Authority  
Michael Lapolla, Executive Director

Authority: P.L. 2003, c.79 (C.27:23-42(b)(7))

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Submit comments by close of the business day on August 4, 2003 to:

Michael Lapolla, Executive Director  
New Jersey Turnpike Authority  
P.O. Box 1121  
New Brunswick, New Jersey 08903

The Agency Proposal Follows:

**Summary**

Under the Consolidation Legislation adopted on May 27, 2003 (P.L. 2003, c. 79), all of its duties, obligations and powers of the New Jersey Highway Authority (the “Highway Authority”) are transferred to the New Jersey Turnpike Authority (the “Turnpike Authority”) on the “Transfer Date,” as defined in the Consolidation Legislation. The “Transfer Date” is defined as “... the date on which the Chair of the [Turnpike] Authority and the Commissioner certify to the Governor that: (i) all bonds issued by the New Jersey Highway Authority cease to be outstanding within the meaning of the resolutions pursuant to which those bonds were issued; and (ii) upon which the [Turnpike] Authority assumes all debts, and statutory responsibilities and obligations of the New Jersey Highway Authority” (P.L. 2003, c. 79 (C.27:23-4)). The Transfer Date is, in fact, July 9, 2003.

Under the Consolidation Legislation, all rules and regulations of the Highway Authority continue in effect as the rules and regulations of the Turnpike Authority until amended,

supplemented or rescinded by the Turnpike Authority in accordance with law. The Consolidation Legislation provides that, notwithstanding any requirements of the “Administrative Procedure Act,” P.L. 1968, c. 410 (C.52:14B-1 et seq.) to the contrary, the Turnpike Authority may adopt interim regulations, after notice and an opportunity for public comment, amending, supplementing, modifying or repealing the regulations of both authorities or either of them. Such regulations shall be effective immediately upon filing with the Office of Administrative Law and shall be effective for a period not to exceed 18 months from the Transfer Date and they may, thereafter, be amended, adopted or readopted in accordance with the “Administrative Procedure Act.” Regulations of the Highway Authority inconsistent with the provisions of the Consolidation Legislation or regulations of the Turnpike Authority may be repealed by the Turnpike Authority acting pursuant to such interim rulemaking provisions.

#### Scope of This Interim Rulemaking Proposal

The Turnpike Authority is in the process of reviewing all of the existing Highway Authority and Turnpike Authority regulations with the goal of promulgating integrated, unified regulations for the newly consolidated Turnpike Authority. In the interim, the Turnpike Authority has initially completed its review of the existing Highway Authority and Turnpike Authority procurement regulations, and with respect thereto the Turnpike Authority now proposes interim uniform procurement regulations, **with the exception of towing procurement regulations**, which will be addressed in a forthcoming proposal.

Accordingly, the Turnpike Authority proposes that the following procurement regulations of the Highway Authority be repealed in the interim:

- N.J.A.C. 19:8-5.1 Purpose and Objective
- N.J.A.C. 19:8-5.2 Departmental Responsibility
- N.J.A.C. 19:8-5.3 Purchases Involving \$12,300 and Over (Excluding Professional Services)

N.J.A.C. 19:8-5.4 Purchase under \$12,300  
N.J.A.C. 19:8-5.5 Repeat Purchases  
N.J.A.C. 19:8-5.6 Emergency Purchases  
N.J.A.C. 19:8-5.8 Purchases Pursuant to Price Agreements  
N.J.A.C. 19:8-5.9 Receipt and Opening of Bids  
N.J.A.C. 19:8-5.11 Rejection of Bids  
N.J.A.C. 19:8-5.12 Bid Guarantees  
N.J.A.C. 19:8-5.13 Terms and Conditions Applicable to Submission of Bids  
N.J.A.C. 19:8-5.14 Bid Errors  
N.J.A.C. 19:8-5.15 Purchase Orders and Contracts  
N.J.A.C. 19:8-5.17 Purchases Under New Jersey State Contracts  
N.J.A.C. 19:8-5.18 Public Advertising Threshold Requirement

The Turnpike Authority proposes to retain the following Highway Authority regulation and adopt it as part of the interim uniform procurement regulations that shall be applicable to the newly consolidated Turnpike Authority:

N.J.A.C. 19:8-5.10 Tie Bids

The Turnpike Authority proposes to re-adopt the following Turnpike Purchasing and Contracting regulations to become part of the interim uniform procurement regulations that shall be applicable to the newly consolidated Turnpike Authority:

N.J.A.C. 19:9-2.1 General Provisions  
N.J.A.C. 19:9-2.2 Purchases for Amounts Requiring Public Advertising  
N.J.A.C. 19:9-2.3 Purchases Under Amount Requiring Public Advertising  
N.J.A.C. 19:9-2.4 Termination of Contract  
N.J.A.C. 19:9-2.8 Procedure to Resolve Protested Solicitations and Awards

The Turnpike Authority proposes to modify the following Turnpike Purchasing and Contracting regulation, as set forth below, to become part of the interim uniform procurement regulations that shall be applicable to the newly consolidated Turnpike Authority:

N.J.A.C. 19:9-2.5 Purchases Under or in Combination with State  
or other Agency Contracts.

- (a) When it is determined to be proper and in the best interest of the Authority, the Authority may purchase equipment, goods, materials and supplies directly, without advertising, from vendors who hold contracts with the State of New Jersey or other State or multi-state

authorities or agencies of the State of New Jersey. In such cases, the purchases shall not be subject to Authority approval.

(b) [No Change].

(c) [No Change].

(d) [No Change].

The Turnpike Authority proposes to adopt the following new regulation:

N.J.A.C. 19:9-6.4: Interim Rulemaking.

With respect to any interim rule proposal which the Turnpike Authority proposes for adoption pursuant to the provisions of the Consolidation Legislation (P.L. 2003, c.79), the Executive Director is empowered, in his discretion, to file such rulemaking proposal with the Office of Administrative Law if the Executive Director determines, at the end of the public comment period and after review, consideration and reply to such comments, that it is appropriate to adopt the rule as proposed without any material changes.

Finally, all “Regulations Governing Use of the Garden State Parkway” at N.J.A.C. 19:8-1 et seq., that are not expressly repealed, retained, readopted or adopted herein as interim procurement regulations shall remain in effect until subsequently repealed, readopted or modified in conformance with the Consolidation Legislation. Additionally, all regulations of the New Jersey Turnpike Authority at N.J.A.C. 19:9-1 et seq. that are not expressly repealed, retained, readopted or adopted herein as interim procurement regulations shall remain in effect until subsequently repealed, readopted or modified in conformance with the Consolidation Legislation.

This Notice shall be posted on the Garden State Parkway and Turnpike Authority web sites, published in the appropriate newspapers, filed with the Secretary of State and the Office of Administrative Law, and forwarded to vendors on bidding lists of the Turnpike Authority and the Garden State Parkway. Public comments on this proposal are invited and will be accepted until the close of business on August 4, 2003. All public comments received will be evaluated and responded to as necessary. If necessary, the Turnpike Authority will make changes to this

proposal and post such changes on the Garden State Parkway and Turnpike Authority web sites. Following this comment period, responses to comments and proposal changes, if any, the Turnpike Authority intends to adopt these interim procurement regulations which will become effective, as provided in the Consolidation Legislation, (P.L. 2003, c. 79 (C. 27:23-42(b)(7)), immediately upon filing with the Office of Administrative Law, in the discretion of the Executive Director as set forth above, and shall thereafter remain in effect for a period not to exceed 18 months from the Transfer Date (July 9, 2003), unless earlier repealed, readopted or modified. Prior to or upon the expiration of this 18 month interim period, the Turnpike Authority intends to modify, adopt or readopt uniform regulations in accordance with the provisions of the Administrative Procedures Act.

#### **Social Impact**

These interim procurement rules will continue a competitive process for procuring Authority goods and services.

#### **Economic Impact**

The Turnpike Authority does not anticipate that the proposed interim regulations will have a significant economic impact. The interim uniform procurement regulations that the Turnpike Authority intends to adopt are similar in all material respects to the Highway Authority procurement regulations that will be repealed. Specifically, the Turnpike Authority procurement regulations: (1) require public notification and advertisement of bids for the performance of any work, or any purchases or hiring of personal property, services, supplies, equipment or goods; (2) do not require the solicitation of bids for the performance or furnishing of professional services; (3) provide for the award of the contract to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the Invitation for Bids or other contract

documents; (4) permit the Turnpike Authority to dispense with public bidding if there is only one source for the required supply, service or product or if there exists a threat to the health, welfare or safety of the public or of property under emergency conditions; and (5) dispenses with public bidding when the aggregate cost or amount involved is less than the minimum amount for which public advertising for bids is required.

#### **Federal Standards Requirement**

A Federal standards analysis is not required because the proposed regulations do not have any applicable Federal standards or requirements.

#### **Jobs Impact**

The Turnpike Authority does not believe that the proposed regulations will result in an increase or decrease of jobs in the State.

#### **Agriculture Industry Impact**

The Turnpike Authority does not believe that the proposed regulations will have any impact on the agriculture industry of this State.

#### **Regulatory Flexibility Analysis**

The proposed interim rulemaking adopts procurement regulations which have already been duly promulgated pursuant to the Administrative Procedures Act by the Highway Authority. These regulations will have a minimal impact on small businesses to the extent such small businesses intend to respond to requests for proposals issued pursuant to these procurement regulations. However, these regulations will not be materially different from the existing procurement policies at the Turnpike Authority and the Highway Authority, and it is not expected that these proposed interim procurement rules will impose any additional compliance costs beyond those already associated with the existing procurement regulations.

### **Smart Growth Impact**

The Turnpike Authority does not anticipate that the proposal will have any impact on the achievement of smart growth or implementation of the State Development and Redevelopment Plan, otherwise known as the State Plan.

### **Full Text**

**Full text** of the applicable regulations may be found in the New Jersey Administrative Code at N.J.A.C. 19:8-1 et seq. and N.J.A.C. 19:9-1 et seq.